S.B.Civil Second Appeal No.6/2003

Hanuman vs. LR's of Chunni Lal & anr.

Date : 23.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. MA Siddiqui, for the appellant.
Mr. Jitendra Gang, for the respondents.

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Heard learned counsel for the parties.

The suit for cancellation of sale deed dated 31.3.1983 filed in the year 1991 was dismissed by the trial court vide judgment and decree dated 17.4.1998, against which an appeal was preferred which was dismissed by the appellate court vide judgment and decree dated 2.2.2002. Hence, this second appeal.

According to the learned counsel for the appellant, the first appellate court categorically held that the property in question was ancestral and, therefore, it is clear that the appellant had a right, title and interest in the property in dispute, therefore, the appellant's father alone could not have sold out the property to the defendants. It is also submitted that the appellate court dismissed the suit of the plaintiff on the ground of limitation despite the fact that the trial court decided the issue of limitation in favour of the appellant and there was no cross objection filed by the defendants on the

finding of issue of limitation.

I have considered the submissions of learned counsel for the appellant and perused the record.

It is clear that the plaintiff's father had two brothers also. All three sold the land and the plaintiff alone has challenged the alienation of the property in question by which his father disclosing that he is the only khatedar tendant of the land in dispute sold the land to the defendants. The first appellate court also took note of the fact that in view of the fact that the land of three brothers was purchased by the defendants and there is every possibility from the preponderance of probabilities that the defendants are in possession of the property in question. The plaintiff's suit is only for cancellation of sale deed and perpetual injunction. The defendants came up with a case that they are in possession of the property and it appears from the facts of the case that the defendants were in possession of the property since 1983 when they purchased the property. The first appellate court even after holding that the property in question appears to be ancestral property even then for the reasons as mentioned in detail in the judgment, the trial court held that the plaintiff has no right to challenge the sale deed. Therefore, I do not find that the first appellate court has committed any error of law or even error of fact in dismissing the appeal of the appellant. The first appellate court also rightly held that the suit filed by the

plaintiff barred by time and that finding could have been recorded by the first appellate court even there being no cross objection in writing of the defendants.

No substantial question of law is involved in this appeal. Hence, this second appeal, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya